IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8593 OF 2003

Shri Ganpat Kashinath Salunke..... Petitioner.

V/s

Pune Municipal Corpn. & Ors..... Respondents.

Mr.R.S.Deshpande with J.G.Shetty and R.R.Jagtap, Adv. For the petitioner.

Mr.V.G.Mujumdar, for Respondent Nos. 1 and 2.

Mr.P.B.Shaligram, for Respondent No.3.

Mr.A.P.Vanarse, AGP for Respondent No.4.

CORAM: V.G.PALSHIKAR, AND
V.R.KINGAONKAR, JJ.
13th March, 2006

ORAL JUDGMENT: (Per Palshikar, J.)

1. By this petition the petitioner seeks a declaration that Resolutions dated 19.9.2003 by the City Improvement Committee of Respondent No.1 and dated 24.9.2003 by the General Body of Respondent No.1 i.e. Municipal Corporation of Pune are legal and valid and for implementation thereof. The prayers read as under :

"(1) The Petition may be allowed.

(2) The promotion of the Petitioner made/recommended by City Improvement Committee of Respondent No.1 on 19.9.2003 and General Body of Respondent NO.1 on 24.9.2003 may be held and declared to be legal, valid by appropriate Writ, order and/or direction.

(3) Pending the hearing and final disposal of the Petition, the promotion approved of the Petitioner may be allowed to be and/or directed to be implemented by the Respondent No.1.

(4) Such other and further order may be passed in the interest of justice."

2.It will thus be seen that though respondent No.3-Pradeep Beldar is made party no relief is claimed against him. It is also pertinent to note that the petitioner seeks implementation of the resolution passed by the General Body Municipal Corporation rec ommending the case of the petitioner for appointment as Deputy City Engineer. The recommendation made by the City Improvement Committee is very clear. It selects the petitioner for promotion to the post of Deputy City Engineer (Civil) and mentions the ost as one belonging to Diploma holders. The resolution then recommends that the transfer of Shri Beldar from category of Diploma holder to the category of Degree holder is for the reasons mentioned liable to be canceled and recommendations to that effec was also made to the General Body. These recommendations were accepted by General Body of the Municipal Corporation of Pune by its resolution dated 24.9.2003.

3. The petitioner feeling aggrieved by non-implementation of this resolution has moved the present petition making the above mentioned prayers. Aggrieved by the decision in relation to

his transfer to the Degree holders' list being canceled Shri Pradeep Beldar has filed Writ Petition No.6090 of 2003. In effect the petitioners in both the petitions have challenged the different parts of 24.9.2003 resolution. Whether the claim of Beldar for being counted in the list of Degree holders is accepted or rejected it will not affect the petitioner-Salunke as he is recommended in the category of Diploma holders. Similarly grant of promotion to Salunke as Diploma holder will not affect the claim of Beldar. However since the validity and implementation of resolu ion dated 24.9.2003 was under consideration in both the petitions they were heard together.

4. Taking into consideration the fact that the claim of each of the petitioner are different we deem it just and proper to decide both the petitions independently. The educational qualification of the petitioner all these years is Diploma in Civil Engine ering and he claims promotion to the post of Deputy City Engineer on the basis of Rules existing. He has the requisite degree and experience as contemplated by Rules prescribing the number of years for Diploma holder and consequently according to him he was liable to be promoted as recommended by resolution dated 24.9.2003. The petitioner was appointed as Junior Engineer in the Municipal Corporation of Pune on 3.10.1984 and was promoted as Sub Engineer on 25.2.1993. However he was promoted on 14.7.1995 as Assistant Engineer and thus had completed the requisite number of years of experience for

becoming eligible for promotion to the post of Deputy City Engineer. His claim is he was fulfilling the qualifications, he has been selected by the Committee an recommended. The recommendation has been accepted by the Municipal Corporation, Pune and therefore a direction is liable to ensue requiring the respondent-Corporation to appoint the petitioner in the post of Deputy City Engineer. We are unable to accept this submission for the simple reason that it is an established principle of law that what is guaranteed by Article 16 of the Constitution of India is consideration for the promotional post in public service. It does not and cannot guarantee appointment after consideration. The right to appoint or not to appoint a duly selected candidate vests in the employer and this position has been accepted by the Supreme Court in its several decisions. It will thus be clear that though selected the petitioner i not appointed. There is no vested right of appointment (See AIR 1996 SC 1612) and therefore this petition seeking such implementation of the Government Resolution by mandating issuance of appointment letter is premature. If and when some one else is a pointed in preference to the petitioner the petitioner may have a cause of action. At present he has no right which can be enforced by issuance of writ. In the result therefore his petition fails and is dismissed.

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